

1 **\$1425**
2 Kent R. Robison, Esq., NSB No. 1167
3 krobison@rbsllaw.com
4 ROBISON, BELAUSTEGUI, SHARP & LOW
5 71 Washington Street
6 Reno, Nevada 89503
7 Tel: (775) 329-3151
8 Fax: (775) 329-7169
9 Attorneys for Plaintiff
10 Wingfield Nevada Group Holding Company, LLC

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 WINGFIELD NEVADA GROUP
10 HOLDING COMPANY, LLC, a
11 Nevada limited liability company,

CASE NO.: CV11-03004

DEPT. NO.: 8

12 Plaintiff,

13 vs.

14 WHITEMORE PETERSON
15 INSTITUTE FOR NEURO-IMMUNE
16 DISEASE, a Nevada Non-Profit
17 Corporation; and DOES I
18 through X and ROE CORPORATIONS
19 XI through XX,

20 Defendants.

21 **COMPLAINT**

22 Wingfield Nevada Group Holding Company, LLC ("WNG") alleges as follows:

23 **OVERVIEW**

24 1. The Whittemore Peterson Institute for Neuro-Immune Disease ("WPI") has
25 improperly and without payment received from WNG managerial and administrative services,
26 labor, effort and benefit worth over \$1,300,000.00 for which WPI has not paid. Through the
27 machinations and manipulations of Annette Whittemore, serving as President of WPI, and her
28 husband Harvey Whittemore, serving as manager of WNG, WNG was not compensated for
WPI's repeated use of WNG's personnel and management. An implied contract was created by
the Whittemores' actions and conduct thereby requiring WPI to compensate WNG for the fair

1 and reasonable value of WPI's use of WNG's management and personnel. Harvey Whittemore
2 ("Whittemore") has admitted to WNG that WPI's use of WNG's management and personnel
3 created an obligation for WPI to pay WNG for WPI's constant and frequent use of WNG's labor,
4 effort and services of WNG's personnel and employees. Despite WNG's demand for payment,
5 WPI refuses to reimburse WNG for WPI's use of WNG's personnel, employees and managerial
6 services.

7 PARTIES

8 2. WNG is a Nevada limited liability company doing business in the State of
9 Nevada.

10 3. WPI is a Nevada corporation doing business in Washoe County, State of Nevada.

11 4. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of the Defendants DOES I through X, inclusive, and ROE CORPORATIONS XI
13 through XX, inclusive, and each of them, are unknown to Plaintiff at the present time, and
14 Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed and
15 believes and thereon alleges that each of the Defendants designated herein as DOES I through X
16 and ROE CORPORATIONS XI through XX are responsible for the claims and damages alleged
17 herein. Once discovery has disclosed the true identities of such parties, Plaintiff will ask leave of
18 this court to amend its Complaint to insert the true names and capacities of said Defendants
19 DOES I through X, inclusive, and ROE CORPORATIONS XI through XX, inclusive, and join
20 such Defendants in this action.

21 GENERAL ALLEGATIONS

22 5. In early 2004, Harvey Whittemore ("Whittemore"), individually and on behalf of
23 The Lakeshore House Limited Partnership, sold 50% of his interest in various corporations to
24 Thomas A. Seeno and his respective entities. The majority of those interests were subsequently
25 transferred into a new company, WNG, formed in 2005. Albert D. Seeno, Jr. later acquired
26 ownership interests in WNG from Whittemore and Thomas A. Seeno.

27 6. From January 1, 2005, Whittemore was obligated to protect the assets and
28 interests of WNG while acting as its manager. While acting as its manager, Whittemore owed

1 WNG and its members fiduciary duties of loyalty, candor, fairness, and full disclosure.

2 7. As manager of WNG, Whittemore had duties to protect the assets of WNG and to
3 use said assets, including labor, services and effort of WNG personnel, management and
4 employees for the benefit of WNG.

5 8. While Whittemore was acting as manager of WNG, his wife Annette Whittemore
6 ("Annette") was President of WPI.

7 9. During the period of time that Whittemore was manager of WNG and while
8 Annette was President of WPI, the Whittemores colluded and conspired to allow WPI excessive,
9 free use of WNG corporate assets, including use of WNG's employees, managers and personnel.

10 10. WNG at all material times was and is entitled to be compensated for WPI's use of
11 WNG's employees, managers and personnel.

12 11. Pursuant to the terms of the applicable WNG Operating Agreement, Whittemore
13 had a duty to perform his managerial duties of WNG in good faith and with loyalty, candor and
14 fairness to WNG and its members. Also, at all times material hereto, Whittemore was acting as
15 WNG's attorney and as such exerted control over the language of the Operating Agreement and
16 did so as an exercise in self-dealing abuse.

17 12. From February of 2007 through 2009, Whittemore exercised complete control
18 over the financial books and records of WNG.

19 13. As Whittemore relinquished his interests in and control of WNG, corporate
20 representatives of WNG commenced a review and inspection of WNG's books and records. In
21 the summer of 2010 through the early months of 2011, the books and records of WNG were
22 scrutinized.

23 14. WNG has discovered WPI's extensive use of WNG's personnel and has
24 determined that WPI has utilized WNG's personnel from January of 2007 through September of
25 2010, the reasonable value of which is \$1,315,558.00 over and above what monies WPI has
26 previously paid to WNG for personnel services.

27 15. Adding a legal interest to the fair value of WPI's use of WNG's personnel, WPI
28 owes WNG the sum of \$1,583,391.00 as of September 14, 2011.

16. On September 14, 2011, WNG made a demand on WPI and Annette that WPI reimburse WNG for WPI's use of WNG's personnel, management, labor, effort and employees.

17. WPI has not denied that a contract exists between WPI and WNG. Yet, WPI has refused and failed to pay WNG for its use of WNG's personnel.

18. WPI is obligated to pay WNG all sums due, plus interest, on the account stated and WPI is obligated to compensate WNG for the attorney's fees and court costs incurred in pursuing this matter.

I.

FIRST CLAIM FOR RELIEF

(Unjust Enrichment)

19. All prior allegations and paragraphs are incorporated herein as though fully set forth.

20. From 2004 through September 2010, WPI used WNG's managers, employees, personnel and assets without paying for its use of said services.

21. The fair and reasonable value of WPI's use of WNG's personnel for the period of time from 2007 to September of 2010 is \$1,315,558.00. With interest as of September 14, 2011, WPI has been unjustly enriched in the amount of \$1,583,391.00.

22. WNG is entitled to recover attorney's fees and court costs.

II.

SECOND CLAIM FOR RELIEF

(Conspiracy)

23. All prior allegations and paragraphs are incorporated herein as though fully set forth.

24. Whittemore and WPI, acting in concert, entered into a tacit, illegal agreement to allow WPI to receive the benefit and use of WNG's personnel, management and employees in such a manner whereby WPI benefitted from such use without having to compensate WNG for WPI's use of WNG's personnel.

25. During all times in which the conspiracy existed, Whittemore was acting outside

1 of the scope of his fiduciary duties to WNG and his conspiratorial conduct is therefore not
2 imputed to WNG.

3 26. WPI and Whittemore conspired to have Whittemore breach his fiduciary duties to
4 WNG by allowing WPI to utilize WNG's employees, management and personnel without WPI
5 having to pay the fair and reasonable value for such use.

6 27. Whittemore is neither an agent nor employee of WPI.

7 28. As a proximate result of WPI's conspiracy, WNG has been damaged in excess of
8 \$10,000.00 and is entitled to punitive damages, legal fees and costs of court.

9 **III.**

10 **THIRD CLAIM FOR RELIEF**

11 **(Aiding and Abetting Breach of Fiduciary Duties)**

12 29. All prior allegations and paragraphs are incorporated herein as though fully set
13 forth.

14 30. From 2004 through September of 2010, WPI aided and abetted Whittemore in
15 breaching his fiduciary duties to WNG.

16 31. While acting as manager of WNG, Whittemore owed WNG, its members and
17 owners, fiduciary duties of honesty, candor, full disclosure and fairness.

18 32. Whittemore was induced and enticed by WPI to allow WPI to use WNG assets,
19 personnel, management and employees without compensation, resulting in WPI's aiding and
20 abetting Whittemore to violate his duties of honesty, candor, full disclosure and fairness to
21 WNG.

22 33. As a proximate result of WPI's aiding and abetting Whittemore to violate his
23 fiduciary duties to WNG by allowing WPI to use WNG's personnel without fair compensation,
24 WNG has been damaged in the amount of \$1,583,391 as of September 15, 2011 and WNG is
25 entitled to an award of attorney's fees and court costs.

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1 IV.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Implied Contract)**

4 34. All prior allegations and paragraphs are incorporated herein as though fully set
5 forth.

6 35. By and through the conduct of WPI and Whittemore concerning WPI's use of
7 WNG's employees, management and personnel, WPI impliedly contracted with WNG to pay the
8 fair, reasonable value for its use of WNG's personnel.

9 36. WNG performed the contract by allowing WPI to use WNG's personnel.

10 37. WPI breached the implied contract by refusing and failing to pay a fair and
11 reasonable sum for its use of WNG's personnel.

12 38. WNG sustained damages in the amount of \$1,315,558.00, plus interest, for a total
13 of \$1,583,391.00 as of September 14, 2011, as a direct and proximate consequence of WPI's
14 breach of the implied contract.

15 V.

16 **FIFTH CLAIM FOR RELIEF**

17 **(Quantum Meruit)**

18 39. All prior allegations and paragraphs are incorporated herein as though fully set
19 forth.

20 40. Based upon the equitable principles of quantum meruit, WPI owes WNG
21 \$1,583,391.00 because of WPI's use of WNG's personnel.

22 VI.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Account Stated)**

25 41. All prior allegations and paragraphs are incorporated herein as though fully set
26 forth.

27 42. The \$1,583,391.00 amount due became an account stated as of September 14,
28 2011.

1 WHEREFORE, WNG seeks judgment as follows:

2 1. For compensatory damages according to proof in excess of \$10,000.00;

3 2. For the fair value of the amount WPI was unjustly enriched by its use of WNG's
4 personnel according to proof;

5 3. For punitive damages in an amount no less than three times compensatory
6 damages according to proof;

7 4. For attorney's fees and court costs; and

8 5. For such other and further relief as the court determines to be appropriate.

9 **AFFIRMATION**

10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that this document does not contain the social
12 security number of any person.

13 Dated this 17th day of October, 2011.

14 ROBISON, BELAUSTEGUI, SHARP & LOW
15 A Professional Corporation
16 71 Washington Street
17 Reno, Nevada 89503

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19 KENT R. ROBISON - NSB No. 1167
20 Attorneys for Plaintiff

21 J:\WPData\Krr\1219.006-WPI Personnel\P-Complaint (2 WNG v WPI -personnel etc) 10-11-11.wpd

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Friday, October 14, 2011 8:48 AM
To: Kent Robison
Subject: NEF: WINGFILED NV GROUP VS. WHITTEMORE PETERSON (D: Complaint - Civil: CV11-03004

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV11-03004
Judge: STEVEN KOSACH
Official File Stamp: 10-13-2011:18:24:28
Clerk Accepted: 10-14-2011:08:45:15
Court: Second Judicial District Court - State of Nevada
Case Title: WINGFILED NV GROUP VS. WHITTEMORE PETERSON (D
Document(s) Submitted: Complaint - Civil
Filed By: KENT ROBISON, ESQ.

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KENT ROBISON, ESQ. for WINGFIELD NEVADA GROUP
HOLDING CO.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

WHITTEMORE PETERSON INSTITUTE FOR NEURO-
IMMUNE DISEASE

10/14/2011